

## REFUNDING CONTRACT (13-25)

THIS REFUNDING CONTRACT, made and entered into as of the 1st day of November, 2013 (the "Refunding Contract"), by and among the COUNTY OF CHIPPEWA, a Michigan county corporation (the "County"), by its BOARD OF PUBLIC WORKS (the "DPW"), under the provisions of Act 34, Public Acts of Michigan, 2001, as amended ("Act 34"), and Act 185, Public Acts of Michigan, 1957, as amended ("Act 185"), (Act 34 and Act 185 together the "Acts"), and the CITY OF SAULT STE. MARIE, a Michigan home rule city located in the County (the "Local Unit").

### WITNESSETH:

WHEREAS, as authorized by Act 185, the County has previously established the City of Sault Ste. Marie Water Supply and Sewage Disposal System (the "System") within the County to serve the Local Unit; and

WHEREAS, pursuant to the provisions of Act 185, the County through the Board of Public Works and the Local Unit did enter into certain contracts to acquire, construct and finance water supply and sewage disposal system improvements to the System; and

WHEREAS, the County through its Board of Public Works did enter into a certain contract with the Local Unit dated January 1, 2010 (the "Contract"), under which the County issued its Water Supply and Sewage Disposal System Limited Tax General Obligation Bonds (City of Sault Ste. Marie) (Federally Taxable-Build America Bonds-Direct Payment), dated February 3, 2010 (the "Prior Bonds"); and

WHEREAS, the Prior Bonds provide that if for any reason (other than because of an action taken by or inaction by the County), the United States Department of Treasury or any agency of the United States of America at any time cease to remit to the County all or any part of the refundable credit, the County has the right at its option to redeem and retire all or any part of the Prior Bonds; and

WHEREAS, in September 2013, the County received its direct pay subsidy refundable credit payment from the Department of Treasury with respect to the interest payable on the Prior Bonds on October 1, 2013, which was reduced by 8.7% pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended; and

WHEREAS, the City has requested and the County desires to exercise its right to call the Prior Bonds for redemption and issue bonds to provide for the refunding of the Prior Bonds; and

WHEREAS, it is the determination and judgment of the County, the DPW and the Local Unit that the Prior Bonds should be refunded to secure for the Local Unit the interest savings anticipated and thereby permit the operation of the System in a more economical fashion for the benefit of the users of the System and the taxpayers of the Local Unit; and

WHEREAS, the execution of the Refunding Contract is necessary in order to implement a refunding program.

NOW, THEREFORE, in consideration of the premises and the covenants of each other, the parties hereto agree as follows:

**Section 1. Approval of Refunding.** The County, the DPW and the Local Unit hereby approve and confirm the refunding of all of the outstanding Prior Bonds under the provisions of the Acts in the manner provided by and pursuant to this Refunding Contract.

**Section 2. Issuance of Refunding Bonds.** The County will issue refunding bonds designated as **Water Supply and Sewage Disposal System Refunding Bonds (City of Sault Ste. Marie), Series 2013 (Limited Tax General Obligation)** (the "Refunding Bonds") in the total principal amount of not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) in order to pay all or a part of the costs of refunding the Prior Bonds. All costs of retiring the Prior Bonds and of issuing the Refunding Bonds, including payment of the principal of and interest on the Prior Bonds, underwriting discount, printing, administrative, legal expenses, credit enhancement costs, rating fees, registrar and paying agent, and escrow agent, if any, fees and all related expenses shall be paid from the proceeds of sale of the Refunding Bonds or from cash amounts to be made available to pay such costs.

**Section 3. Actions of County and DPW.** To carry out and accomplish the refunding in accordance with the provisions of Michigan law, the County and the DPW shall take the following steps:

a. The DPW will submit to the Board of Commissioners of the County a resolution providing for the issuance of the Refunding Bonds in the aggregate principal amount of not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) (the "Refunding Bond Resolution"). The Refunding Bonds shall mature as authorized by law, and will be issued in anticipation of the debt service installment payments required to be made by the Local Unit as provided in the Contract and as hereinafter provided in this Refunding Contract and will be secured primarily by the contractual obligations of the Local Unit to pay said installments when due, including interest and secondarily, if approved by a three-fifths (3/5) majority of the members of the Board of Commissioners, by the full faith and credit of the County. After due adoption of the Refunding Bond Resolution by the County Board of Commissioners, the DPW will take all legal procedures and steps necessary to effectuate the sale, issuance and delivery of the Refunding Bonds.

b. The DPW in consultation with the Local Unit will make a determination based upon then prevailing market conditions if, and when, to refund the Prior Bonds.

c. The County and the DPW, upon receipt of proceeds of sale of the Refunding Bonds, will comply with all provisions and requirements of law, the Refunding Bond Resolution and this Refunding Contract relative to the disposition and use of the proceeds of the Refunding Bonds to refund the Prior Bonds and to pay the costs thereof.

d. The County will use Refunding Bonds proceeds to refund the Prior Bonds and shall not make any investments or take any other actions which would cause the Refunding Bonds herein authorized to be constituted as arbitrage bonds pursuant to any applicable federal statutes or regulations.

Section 4. Payments by Local Unit. The full principal amount of the Refunding Bonds shall be charged to, and paid to the DPW by the Local Unit in annual principal installments, together with interest and other expenses as herein provided. It is understood and agreed that the Refunding Bonds of the County will be issued in anticipation of such payments by the Local Unit.

It is agreed that the Local Unit shall pay to the DPW the principal amounts of the Refunding Bonds thirty (30) days prior to the annual maturity date of the Refunding Bonds (or on such other date as shall be agreed upon by the Local Unit and the DPW), and in addition, as accrued interest on the principal installments remaining unpaid, an amount sufficient to pay all interest due on the next succeeding interest payment date shall be paid thirty (30) days prior to each interest payment date on the Refunding Bonds (or on such other date as shall be agreed upon by the Local Unit and the DPW). From time to time as the DPW is billed by the registrar/transfer/paying agent for the Refunding Bonds for their services, and as other costs and expenses accrue to the DPW from handling of the payments made by the Local Unit or from other action taken in connection with the Refunding Bonds, the DPW shall notify the Local Unit of the amount of such fees, costs and expenses, and the Local Unit shall, within thirty (30) days from such notification, remit to the DPW sufficient funds to pay such amounts. The Local Unit shall pay to the County additional sums, if any, due and owing on the Refunding Bonds at such times and in such manner as shall be required by the terms of the Refunding Bonds.

If the Refunding Bonds are redeemable prior to maturity at the option of the County, then the Local Unit shall have the right to prepay its installment payments due under this Refunding Contract and thereby request that the DPW cause redemption of all or part of the Refunding Bonds as provided in the Refunding Bonds. The DPW shall cause such notice or notices of redemption to be made at the times and in the manner prescribed in the Refunding Bonds. Notwithstanding the foregoing, the obligation of the Local Unit to make payments of principal and interest and premium, if any, for the Refunding Bonds shall continue hereunder until the Refunding Bonds are paid in full.

The DPW shall, within thirty (30) days after the delivery of the Refunding Bonds, furnish the Local Unit with a complete schedule of said installments and the interest thereon and due dates and shall also, at least thirty (30) days prior to each due date, advise the Local Unit, in writing, of the exact amount due on said date. The failure to give such notice shall not, however, excuse the Local Unit from making their required payments when due under the provisions hereof.

If any installment payment as herein provided is not paid when due, the amount so not paid shall be subject to a penalty in addition to interest of one percent (1%) thereof for each month or fraction thereof that the same remains unpaid after the due date.

**Section 5. Limited Tax Full Faith and Credit Pledge of Local Unit.** The Local Unit, pursuant to authorization of Section 12 of Act 185, hereby irrevocably pledges its full faith and credit for the prompt and timely payment of its obligations pledged for payment of the Refunding Bonds as expressed in this Refunding Contract. Pursuant to such pledge, if other funds are not available, the Local Unit shall be required to pay such amounts from its general funds as a first budget obligation and shall each year levy an ad valorem tax on all the taxable property in the Local Unit in an amount which, taking into consideration estimated delinquencies in tax collections, will be sufficient to pay such obligations under this Refunding Contract becoming due before the time of the following year's tax collections, such annual levy, however, to be subject to applicable constitutional, statutory and charter tax rate limitations. The herein stated contractual commitments of the Local Unit are expressly recognized as being for the purpose of providing funds to meet the contractual obligations of the Local Unit in anticipation of which the Refunding Bonds are issued. Nothing herein contained shall be construed to prevent the Local Unit from using any, or any combination of, the means and methods provided in paragraph 2, Section 12 of Act 185 for the purpose of providing funds to meet its obligations under this Refunding Contract, and if at the time of making the annual tax levy there shall be other funds on hand earmarked and set aside for the payment of the contractual obligations due prior to the next tax collection period, then such annual tax levy may be reduced by such amount.

The Local Unit hereby acknowledges that it will use funds from all sources legally permitted by Act 185 for payment of the installments due under this Refunding Contract.

**Section 6. Prepayments by Local Unit.** Additional moneys over and above any of the payments specified in this Refunding Contract may be prepaid as provided in the Contract and other provisions of this Refunding Contract.

**Section 7. Payment Default by Local Unit.** In the event that the Local Unit shall fail for any reason to pay to the DPW at the times specified the amounts required to be paid by the provisions of this Refunding Contract, the DPW shall immediately give notice of such default and the amount thereof, in writing, to the Local Unit Treasurer, the County Treasurer of the County, the Treasurer of the State of Michigan, and such other officials charged with disbursement to the delinquent Local Unit of funds returned by the State and now or hereafter under Act 185 available for pledge as provided in this paragraph and in Section 17 of Act 185, and if such default is not corrected within ten (10) days after such notification, the State Treasurer, or other appropriate official charged with disbursement to the delinquent Local Unit of the aforesaid funds, is, by these presents, specifically authorized by the delinquent Local Unit, to the extent permitted by law, to withhold from its respective aforesaid funds the maximum amount necessary to cure any deficit it may incur and to pay said sums so withheld to the DPW, to apply on its obligations in default as herein set forth. Any such moneys so withheld and paid shall be considered to have been paid to the Local Unit within the meaning of the Michigan Constitution and statutes, the purpose of this provision being to voluntarily pledge and authorize the use of said funds owing to the Local Unit to meet any of its past-due obligations due under the provisions of this Refunding Contract. In addition to the foregoing, the DPW shall have all other rights and remedies provided by law to enforce the obligations of the Local Unit to make its payments in the manner and at the times required by this Refunding Contract. The Local Unit agrees not to take any action to reduce the right of the County to receive the aforesaid state-returned moneys in the event of default.

**Section 8. Preservation of Contract Provisions.** All provisions of the Contract not inconsistent herewith, and particularly all covenants relative to the payment of and security for the Prior Bonds made by the Local Unit therein shall remain in full force and effect and shall apply with equal effect to the Refunding Bonds authorized hereby, it being understood that upon issuance of the Refunding Bonds, the Prior Bonds will be redeemed by purchase and the Refunding Bonds shall be substituted therefor and shall be outstanding in their place and stead.

**Section 9. Additional Financing.** Nothing herein contained shall in any way be construed to prevent additional financing under the provisions of Act 185 or any other law for the purpose of constructing all or any portion of additional necessary water or sewage disposal improvements in the Local Unit.

**Section 10. Voidability of Refunding Contract; Payment of Expenses.** The obligations and undertakings of each of the parties to this Refunding Contract shall be conditioned upon the successful accomplishment of the proposed refunding, and therefore if for any reason whatsoever the Refunding Bonds are not issued, then this Refunding Contract shall be considered void and of no force and effect; provided, however, that in such event, all costs and expenses shall be paid by the Local Unit in accordance with existing commitments to the County and the County shall not be obligated for such costs and expenses.

**Section 11. Bondholders' Rights.** The DPW and the Local Unit each recognize that the owners from time to time of the Refunding Bonds will have contractual rights in this Refunding Contract, and it is therefore covenanted and agreed by the DPW and the Local Unit that so long as any of the Refunding Bonds shall remain outstanding and unpaid, the provisions of this Refunding Contract shall not be subject to any alteration or revision which would in any manner materially affect either the security of the Refunding Bonds or the prompt payment of principal of or interest thereon. The Local Unit and the DPW each further covenants and agrees that it will comply with its respective duties and obligations under the terms of this Refunding Contract promptly at all times and in the manner herein set forth, and will not suffer to be done any act which would in any way impair the Refunding Bonds, the security therefor, or the prompt payment of principal of and interest thereon. It is hereby declared that the terms of this Refunding Contract insofar as they pertain to the security of the Refunding Bonds shall be deemed to be for the benefit of the owners of the Refunding Bonds.

**Section 12. Refunding Contract Term.** This Refunding Contract shall remain in full force and effect for a period of sixteen (16) years from the date hereof, or until such lesser time as the Refunding Bonds issued by the County are paid, at which time this Refunding Contract shall be terminated, and the provisions of the Contract relative to disposition of the System shall be carried out. In any event, the obligations of the Local Unit to make its payments required hereunder shall be terminated at such time as all of the Refunding Bonds are paid in full by the Local Unit, together with all interest and penalties and other obligations hereunder.

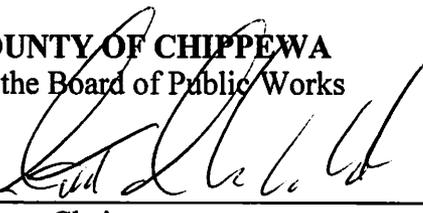
**Section 13. Benefit of Refunding Contract.** This Refunding Contract shall inure to the benefit of and be binding upon the respective parties hereto, their successors and assigns.

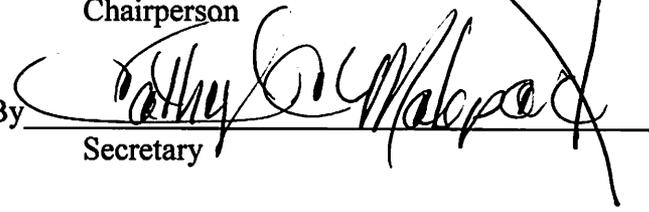
**Section 14. Qualified Tax-Exempt Obligations.** The County and the Local Unit both hereby designate the Refunding Bonds as “qualified tax-exempt obligations” for purposes of deduction of interest expense by financial institutions pursuant to the Internal Revenue Code of 1986, as amended.

**Section 15. Effective Date.** This Refunding Contract shall become effective upon approval by the City Commission of Local Unit, by the Board of Public Works of the County and by the Board of Commissioners of the County and when duly executed by the Mayor and the City Clerk of Local Unit and the Chairperson and Secretary of the Board of Public Works for and on behalf of the County. This Refunding Contract may be executed in several counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date and year first above written.

**COUNTY OF CHIPPEWA**  
By the Board of Public Works

By   
Chairperson

By   
Secretary

**CITY OF SAULT STE. MARIE**

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Clerk

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